

# **Supreme Court Summaries**

**Opinion filed February 26, 2016**

**People v. Boston, 2016 IL 118661**

Appellate citation: 2014 IL App (1st) 111489-U

JUSTICE THEIS delivered the judgment of the court, with opinion.

Chief Justice Garman and Justices Freeman, Thomas, Kilbride, and Karmeier concurred in the judgment and opinion.

Justice Burke dissented, with opinion.

In 1997, a Chicago woman was found stabbed to death in her bathtub. A bloody palm print was on the wall. The blood was her own, but the maker of the print was not identified, and the case remained unsolved. In 2004, a Cook County prosecutor appeared before a grand jury, requesting a subpoena in the cold case for the palm prints of Jerry Boston, who was then incarcerated on a natural life sentence for armed robbery. The grand jury was told that Boston had been the ex-boyfriend of the victim and that the police had information that he might have been involved in the killing. The palm prints obtained through the use of this subpoena were not initially returned to the grand jury, but to the Illinois State Police crime lab, where a match with the defendant was found. In the meantime, a sample of the defendant's DNA was obtained pursuant to a search warrant from a judge. A vaginal swab had been taken during the victim's autopsy, and the male DNA extracted from the semen which was recovered was shown to be consistent with having originated from the defendant. In 2005, the State made an appearance before a differently composed grand jury, this time seeking an indictment, which was granted.

Prior to trial, the defendant had complained of improper grand jury procedures, and he had unsuccessfully moved to quash the subpoena and suppress the palm print evidence. He argued that it was improper, under the fourth amendment prohibition against unreasonable searches and seizures, to supplement a police investigation by use of a grand jury subpoena, rather than seeking a warrant from a judge. He also complained that the prosecution had acted improperly in failing to return the print evidence to the grand jury. The trial court denied the motion, finding that the information which was given to the grand jury was sufficient and particularized enough to prevent the quashing of the subpoena, and that, on the totality of the circumstances, the issue of prejudice weighed heavily against the defendant. The print evidence was admitted at the 2009 jury trial, at which the defendant was convicted of first degree murder, with a natural life sentence imposed. The appellate court affirmed, and the defendant appealed to the Illinois Supreme Court.

As to the defendant's claim of unreasonable search and seizure, the supreme

court pointed out that no preliminary showing of reasonableness is required for the noninvasive collection of evidence such as a palm print, and that the defendant did not dispute the relevance of this evidence. Although the Constitution of Illinois goes further than the Constitution of the United States by requiring some showing of individualized suspicion before such a subpoena may be issued, the supreme court held that, in this case, the information initially presented to the grand jury was sufficiently tied to the defendant for the court to hold that the requisite individualized suspicion to support issuance of the subpoena was present.

As to the defendant's claim of improper grand jury procedures, the supreme court pointed out that the grand jury is an integral part of the court, and that the court has the inherent power to supervise and prevent perversion of the grand jury's process. Subpoenaed documents should be made returnable to the court so that, before the State's Attorney has access to the material, the court can determine relevance and materiality, privilege, and whether the subpoena is unreasonable or oppressive. Here the subpoena was not prepared at the direction of the grand jury, but at the direction of the prosecutor, who made it returnable to her or to the officer serving it. It was not made returnable to the grand jury, and the prints, once acquired, were taken to the crime lab and not returned to the grand jury. There is nothing in the record to indicate that, when it issued the subpoena, the grand jury granted agency powers to the prosecutor or to the officer serving the subpoena, or that it was ever asked to do so. The trial court had also been of the view that the prosecutor's subsequent appearance before the grand jury to seek an indictment did not amount to a return of the subpoena to the grand jury. Despite refusing to quash the subpoena, however, the trial court had made the statement that the procedures before the grand jury were "extremely sloppy" and did not "comport with all dictates of procedure that [it] would expect in terms of conduct in front of the grand jury." In this decision, the supreme court agreed with this quoted remark and said that what occurred here should not be repeated.

Nevertheless, the defendant failed to articulate how he was prejudiced, as the trial court had recognized. Finding a decision it rendered in a 1994 capital case to be controlling, the Illinois Supreme Court said that there is no basis for disturbing the trial court's denial of the motion to quash and suppress where, as here, the defendant has not shown that he was prejudiced in any way by the grand jury process employed by the State to obtain the palm prints.